IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL, CIVIL JURISDICTION

WRIT PETITION LODGING NO.2444 OF 2006

Bhagirathi N. Padave.....Petitioner

Vs.

Controller of Accommodation

& Ors. ....Respondents

Mr. P.G.Karande, for the petitioner
Ms. Geeta Shastri, AGP for respondents.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.
DATE: 20TH OCTOBER,2006

P.C.

. The petitioner is a widow of a Government employee who was allotted premises which were requisitioned under the provisions of the Bombay Land Acquisition Act, 1948. The late husband of the petitioner expired on 18th May, 1995. The petitioner, however, continued to be in occupation of the premises. The respondents thereafter initiated proceedings against the petitioner under Section 8-C(2) of the Bombay Land Acquisition Act, 1948. After show cause an order came to be passed on 18th November, 2005 directing that the petitioner be evicted from the premises. The respondents thereafter sought to execute the order on 3rd October, 2006. It is after this that the Appeal has been filed. As the application for stay was not considered the petitioner moved this Court by the present petition challenging the order dated 3rd October, 2006.

2. It is the submission on behalf of the petitioner that considering the provisions of the

amendment to the relevant Rent Control Act, persons like the petitioner have been made direct tenant of the landlord and consequently cannot be evicted.

. On the other hand on behalf of the respondents their learned AGP submits that as the husband of the petitioner ceased to be a Government employee before 7th December, 1996 the benefit of the amendment is inapplicable. Reliance for that purpose was placed on the judgment of the Supreme Court in Maheshchandra Trikamji Gajjar vs. State of Maharashtra (2003) 3 SCC 295. The learned Bench of the Supreme Court without going into the constitutional validity of the Act which was before it considered a similar case of a person who has ceased to be a Government employee before the amendment and whether such person is entitled to eviction. The Supreme Court after considering the objects and reasons clause and the subsequent amendment of 1997 held that the amendment of 1997 would make no difference in respect of those government employees who ceased to be in employment prior to 7th December, 1996. Such an employee has no right to continue in possession. It is, therefore, submitted that the Petitioner herein has no right. The learned AGP also submits that though an Appeal is filed an Appeal against the order of the nature dated 3rd October, 2006 cannot be the subject matter of the present petition. We are not called upon to decide that issue in the present petition. The only

question is whether on the facts and circumstances this would be a fit case for this Court to grant any interim relief as prayed for by the petitioner herein. Considering the judgment of the Supreme Court in Maheshchandra Trikamji Gajjar (supra) the petitioner would have no such right. Learned Counsel for the petitioner submits that the Supreme Court has not considered some vital aspects bearing in mind the objects and reasons clause. Once the Supreme Court has pronounced the Judgment in so far as this Court is concerned it is precluded from looking into any other aspects. If the petitioner is still advised it is open to the petitioner to take such steps in law which the petitioner is entitled to.

3. On behalf of the respondent learned AGP points out that the premises were sealed on 12th October, 2006. If the petitioner's belongings are still in the premises the respondents to hand over the belongings to the petitioner. If the petitioner and all other adult family members of her family filing usual undertaking on or before 1st November, 2006 to vacate the premises on or before 30th December, 2006 the respondents to reopen the premises and allow the petitioner with herfamily to occupy the same. Copy of the undertaking to be furnished to the respondents.

(F.I. REBELLO, J)

(ANOOP V. MOHTA,J).